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January 10, 2002

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REDACTED -
For Public Inspection

Ms. Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20544

Re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket 01-324

Dear Ms. Salas:

This is the cover letter for the Reply Comments for the Application by Verizon New England Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island ("Reply Comments").

These Reply Comments contain confidential information. We are filing confidential and redacted versions of the Reply Comments.

1. The Reply Comments consist of (a) a stand-alone document entitled Reply Comments by Verizon New England ("the Reply Brief"), and (b) two Reply Appendices containing supporting material.

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2. Specifically, we are herewith submitting for filing:

a. One original of only the portions of the Reply Comments that contain confidential information;

b. One original of the redacted Reply Comments;

c. Four copies of the redacted Reply Comments; and

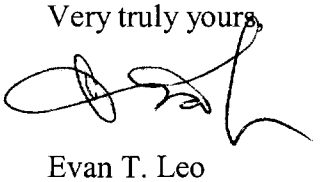
d. One CD-ROM containing the redacted Reply Comments.

3. We are also tendering to you certain copies of this letter and of portions of the Reply Comments for date-stamping purposes. Please date-stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the Rhode Island Public Utility Commission, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7930 or Steven McPherson at 703-351-3083.

Very truly yours,



Evan T. Leo

Encs.

REDACTED – For Public Inspection

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	
NYNEX Long Distance Company	)	CC Docket No. 01-324
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in Rhode Island	)	

REPLY COMMENTS OF VERIZON NEW ENGLAND

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January 10, 2002

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INTRODUCTION AND SUMMARY

This Application presents an open-and-shut case for long distance approval. In Rhode Island, Verizon has opened its markets to the exact same degree as in its 271-approved States, and the facts on the ground show that local competition in Rhode Island is thriving. Verizon's Application to provide long distance service in Rhode Island should be granted.

The comments filed here provide further confirmation that this is the case. For the first time in a section 271 proceeding, no party disputes that Verizon is offering everything under the checklist in the manner that it is required to, or that Verizon's performance in providing access to the various checklist items is excellent across the board. Likewise, no party disputes that Verizon's operations support systems ("OSS") are fully compliant, nor does any party claim that the third-party test of those systems was somehow inadequate. And no party disputes that Verizon's performance measurements and its performance assurance plan are sufficient to ensure that Verizon's local markets remain open in the future.

Moreover, based on its own "thorough review," the Rhode Island PUC has affirmed unambiguously that Verizon "has met the requirements of each of the 14 competitive checklist requirements," and that "[t]he local telecommunications market in Rhode Island is open for competition." The PUC therefore "recommends that the FCC grant VZ-RI's application for authorization to provide in-region, interLATA services in Rhode Island." And the Department of Justice ("DOJ") likewise concludes that "Verizon has generally succeeded in opening its local markets in Rhode Island to competition," and recommends "approval of Verizon's application."

Indeed, only one commenter here — CTC — raises any issue with respect to Verizon's checklist offerings, complaining solely about Verizon's offering of dark fiber. But CTC's claims are based on the misguided premise that Verizon should be required to offer dark fiber in ways that this Commission already has found go beyond the requirements of the Act. In any event, CTC's claims do not present an issue going forward, because — as CTC concedes — the PUC already has required Verizon to modify its dark-fiber offering in ways that fully address CTC's concerns.

In addition, the long distance incumbents again rehash their claims that the wholesale rates established by the Rhode Island PUC are somehow too high. But the fact of the matter is that the PUC established rates that it found, based on an extensive review, comply fully with this Commission's TELRIC methodology. Moreover, these rates unquestionably fall within the range that a reasonable application of TELRIC would produce given that the rates are lower (relative to the cost levels) than the rates this Commission approved in Massachusetts and New York. Under the Commission's well-settled standard — which the D.C. Circuit recently upheld — this is the end of the matter for checklist purposes.

Likewise, there is no legitimate claim that the rates established by the PUC raise an issue under section 271's public interest test. There already is extensive competition in Rhode Island for business and residence customers alike, which means that the factual and legal predicates for making such a claim do not exist. Indeed, facilities-based competition is more widely available in Rhode Island than in any other state in the country, with service available to between 75 and 95 percent of all homes in the state. Moreover, there is proportionately more *residential* competition in Rhode Island than in

any other state where section 271 authority has been granted, at the time applications were filed in those states.

Finally, there is no dispute that Verizon's entry into the long distance business in New York, Massachusetts, and Pennsylvania has produced literally hundreds of millions of dollars of benefits for consumers in the form of increased local and long distance competition. As the Rhode Island PUC has urged, Verizon should be permitted "to enter the long-distance market and bring the benefits of additional competition to Rhode Island consumers."

For all these reasons, the Commission should grant this Application.

I. THE FACT THAT VERIZON'S CHECKLIST OFFERINGS SATISFY THE ACT IS NOT CONTESTED.

Verizon demonstrated in its Application that it is providing access to each of the 14 checklist items in the same manner and using the same systems and processes as in Massachusetts and across the New England states, where the Commission found that Verizon satisfies the Act in all respects. Verizon also demonstrated that its performance in Rhode Island — and in Massachusetts, where volumes are even higher — is excellent across the board. The Rhode Island PUC has confirmed all of this, verifying unambiguously that Verizon "has met the requirements of each of the 14 competitive checklist items." PUC Report at 189.

The PUC's conclusion is based on a "thorough review," id. at 4, that is entitled to maximum deference under this Commission's well-settled precedent.[1] The PUC "conducted discovery and hearings" regarding Verizon's checklist compliance, PUC Report at 4; it "conducted a technical record conference to discuss the C2C Guidelines," id.; and it "retained KPMG Consulting" to evaluate "Verizon's OSS systems, interfaces and processes," id. at 5. Based on all of this, the PUC's 200-page final report "concludes that VZ-RI has met the requirements of sections 271 and 272 of the Act, and therefore,

[1] See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 51 (1999) ("New York Order") ("Given the 90-day statutory deadline to reach a decision on a section 271 application . . . where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight."); Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 4 (2000) ("Texas Order") (according state commission decision "substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues").

recommends that the FCC grant VZ-RI's application for authorization to provide in-region, interLATA services in Rhode Island." Id. at 2.

The DOJ agrees that "Verizon has generally succeeded in opening its local markets in Rhode Island" and that "conditions in the Rhode Island local communications market appear favorable to fostering competition." DOJ Eval. at 2, 7. The DOJ also recognizes that CLECs in this proceeding have raised virtually no complaints with respect to the "non-price aspects" of Verizon's performance. Id. at 6.[2] Accordingly, the DOJ also "recommends approval" of this Application. Id.

Moreover, Verizon has continued to provide excellent performance in Rhode Island since the time of its Application. For example, in October and November — the two most recent months for which data are available — Verizon provided on time for competing carriers more than 99 percent of their interconnection trunks, 100 percent of their physical collocation arrangements, more than 99 percent of their network element platforms, approximately 98 percent of their stand-alone voice-grade loops, approximately 99 percent of their hot-cut loops, and approximately 99 percent of their unbundled DSL-capable loops. See Lacouture/Ruesterholz Reply Decl. ¶¶ 5, 18, 30, 57, 59, 60.

Verizon's performance has, in fact, been so strong that not a single commenter challenges it in any way. The only issue raised by any commenter that relates to Verizon's checklist offerings is CTC's claim that Verizon has not provided dark fiber in

[2] Even with respect to UNE pricing, the DOJ merely states that it "'will not attempt to make its own independent determination whether prices are appropriately cost-based.'" DOJ Eval. at 6 (quoting DOJ Kansas/Oklahoma Eval. at 11). Instead of performing such an analysis, the DOJ merely notes that several commenters have complained about Verizon's UNE prices and leaves it to the Commission to evaluate those claims. Id.

Rhode Island in the same way as it provides it in Massachusetts and New Hampshire. This claim is entirely without merit.

First, CTC's complaint is not that Verizon's dark-fiber offering does not comply with the Act or the Commission's rules. Rather, CTC seeks modifications to Verizon's dark-fiber offering that go beyond what the Act requires. The PUC found that Verizon "offers dark fiber in the same manner in Rhode Island as in New York," PUC Report at 145, and the Commission previously held that Verizon's dark-fiber offering in New York satisfies the Act. See Connecticut Order ¶¶ 49-54;[3] see also Pennsylvania Order ¶¶ 109-113.[4] The PUC rightfully concluded, therefore, that "the FCC should find VZ-Rhode Island compliant." PUC Report at 145.

Second, CTC concedes that the Rhode Island PUC already has taken steps that fully address CTC's concerns. See CTC at 8 (subheading II) ("The Rhode Island Commission has required Verizon to adopt reasonable practices and offer reasonable terms to CLECs on a prospective basis"). In particular, the PUC "ordered VZ-Rhode Island to adopt substantially the same procedures for its dark fiber offering as exists in

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[3] Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147 (2001) ("Connecticut Order"). CTC argues (at 10) that the Commission should not rely on its findings in the Connecticut Order because of the limited number of orders for dark fiber in that state. This claim is particularly ironic given that CTC has "not requested dark fiber in Rhode Island." PUC Report at 45. In any event, the fact that there were low volumes of dark fiber in Connecticut is not relevant to the terms and conditions of that offering, but rather — if anything — only to Verizon's ability to provide that offering in large volumes. As CTC challenges only the terms and conditions of Verizon's offering — not its ability to provision that offering in a timely manner — the Connecticut Order is not only relevant, but dispositive.

[4] Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) ("Pennsylvania Order").

Massachusetts." PUC Report at 145. The PUC accordingly found that "we are confident that CTC's concerns have been adequately addressed." Id.[5]

Finally, to the extent that CTC wants to change the Commission's rules, this request is more appropriately addressed in other forums. For example, the Commission recently has initiated a Triennial Review of its unbundling rules, which is intended "to comprehensively consider the appropriate changes, if any, to our unbundling approach," rather than "decid[ing] these issues piecemeal."[6]

II. THE UNE PRICES ADOPTED BY THE RHODE ISLAND PUC LIKEWISE COMPLY IN ALL RESPECTS WITH THE ACT.

As the Rhode Island PUC confirms in its consultative report, the rates it has established for Verizon's unbundled network elements, after conducting lengthy proceedings applying the TELRIC methodology, are "TELRIC-compliant." PUC Report at 45.[7] Moreover, as Verizon demonstrates in its Application and here, these rates unquestionably fall within the range that a reasonable application of TELRIC would

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[5] In light of the fact that the PUC has addressed its concerns, CTC's argument boils down to the claim that Verizon may still appeal the PUC's order. This is simply untrue. The time for such an appeal already has expired. See Rhode Island PUC, Rules of Practice and Procedure, § 1.30(a) (1998). Moreover, even if Verizon could still appeal the PUC's order, it would be no less checklist compliant on that account. See, e.g., Pennsylvania Order ¶ 100 & n.345 (finding that Verizon complies with the requirement to provide a single point of interconnection in each LATA, despite the fact that Verizon was appealing the State-level requirement that it do so in federal district court); Texas Order ¶ 386 (finding that SBC complied with its obligation to provide reciprocal compensation consistent with the Texas PUC's orders, despite the fact that SBC was appealing those orders).

[6] Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking ¶ 2, CC Docket No. 01-338, et al., FCC 01-361 (rel. Dec. 20, 2001) ("UNE Triennial Review NPRM").

[7] See also Transcript of November 15, 2001 Open Meeting of the Rhode Island PUC at 6, 38-43 ("November 15th Open Meeting") (Approving Verizon's rates as "compliant with TELRIC").

produce. Under the Commission's well-settled precedent, that is the end of the inquiry for purposes of demonstrating checklist compliance.

The Commission has held that, where a Bell company demonstrates that "the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF cost model, *then we will find that the applicant has met its burden to show that its rates are TELRIC compliant.*" Pennsylvania Order ¶ 65 (emphasis added). Indeed, where a Bell company makes this showing, the Commission has held that there is no need to examine the manner in which the state commission applied TELRIC, or to examine the inputs that it used, because even if acted "improperly (*e.g.*, it made a major methodological mistake or incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit)," the Commission will still "look to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce." Arkansas/Missouri Order ¶ 56;[8] see also Pennsylvania Order ¶ 61 ("Even assuming, *arguendo*, that all of AT&T's and WorldCom's pricing claims are correct and that the specific inputs do not comply with TELRIC, we conclude that the alleged errors do not yield an end result outside a TELRIC-based range.").

The D.C. Circuit has recently upheld the Commission's TELRIC analysis. See Sprint Communications Co. v. FCC, No. 01-1706, 2001 WL 1657297, at *7 (D.C. Cir.

[8] Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, CC Docket No. 01-194, FCC 01-338 (rel. Nov. 16, 2001) ("Arkansas/Missouri Order").

Dec. 28, 2001) (citing AT&T Corp. v. FCC, 220 F.3d 607, 616 (D.C. Cir. 2000)). In particular, the court affirmed the Commission's practice of using a benchmark test, and, where that test is met, of refusing to look behind the rates to determine whether they were "calculated by TELRIC means." Id. at *11. The Court reasoned that, "[t]o create a distinction between properly derived cost-based rates and rates that were equal to them . . . 'would promote form over substance, which, given the necessarily imprecise nature of setting TELRIC-based pricing, is wholly unnecessary.'" Id. (quoting Kansas/Oklahoma Order ¶ 87).[9]

Here, there is no question that the rates adopted by the Rhode Island PUC meet this established standard. In particular, Verizon demonstrated in its Application that its rates for switching usage and unbundled loops are lower (relative to the cost levels) than the rates for these elements in Massachusetts and New York, where the Commission found that Verizon's rates satisfy the Act. And, as demonstrated below, the rates in Rhode Island for the various switching-related elements together — switching usage, switching port, transport, and signaling — are likewise comparable to the rates in Massachusetts and New York. Under the Commission's own well-settled standard, as recently upheld by the D.C. Circuit, that is the end of the matter.

Despite all this, AT&T and WorldCom rehash their oft-rejected arguments for why the Commission should apply some other tests that the long distance incumbents themselves have contrived. But as the Commission repeatedly has held, there quite obviously is no basis in the Act for this approach. Moreover, AT&T and WorldCom

[9] Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001) ("Kansas/Oklahoma Order").

raise a number of claims regarding the specific inputs used by the PUC in establishing UNE rates. As explained above, however, there is no need to address the long distance incumbents' arguments about isolated inputs under the standard applied by the Commission. In any event, as demonstrated below, the long distance incumbents' claims are wrong.

General Pricing Claims. The long distance incumbents first argue that the Commission should ignore whether the UNE rates in Rhode Island comply with TELRIC and consider instead whether they provide a gross profit margin that, in the long distance incumbents' own view, is high enough to stimulate "broad-based entry plans to serve residential customers." See AT&T at 17; WorldCom at 3 n.2. But the Commission has repeatedly held that, in order to satisfy the checklist, "incumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin." Arkansas/Missouri Order ¶ 65; see also Kansas/Oklahoma Order ¶ 92; Pennsylvania Order ¶ 70. And the D.C. Circuit has explicitly rejected the argument that the Commission must perform such an analysis in the context of determining whether rates satisfy the checklist under section 271(d)(3)(A):

> "*[W]e can hardly find the Commission's rejection of appellants' proposal unreasonable.* . . . And it would be reasonable for the Commission to treat any questions raised by the low volumes, or by the appellants' evidence showing the difficulty of making a profit . . . as subsumed within the issue of TELRIC compliance. As the appellants concede, the lack of competition they allude to is neither a direct nor a conclusive proof of a checklist violation.

Sprint, 2001 WL 1657297, at *3.

The long distance incumbents next argue that the Commission should ignore whether the rates in Rhode Island comply with TELRIC and instead impose the lower rates recommended by an administrative law judge in New York. See AT&T at 5;

WorldCom at ii-iii, 10. But the Commission already has held that the "ongoing review of the UNE rates being conducted by the New York Commission" in no way proves that the existing rates in New York and Massachusetts "are not TELRIC-based." Massachusetts Order ¶ 31.[10] Moreover, as the PUC has noted, "the New York ALJ's decision has not been adopted by the NYPSC and, even it was, there is no certainty these rates would conform with TELRIC standards for Rhode Island." PUC Report at 44-45; see also November 28th TELRIC Order at 5 ("A New York administrative law judge's recommended decision is not a basis upon which the Commission can order UNE rates for Rhode Island, because there is no guarantee that the recommended decision will be adopted by the state commission.").[11] In addition, while AT&T and WorldCom fail even to mention (or cite) it, the New York Public Service Commission's own staff has recommended that the New York UNE-pricing proceeding be held in abeyance to ensure that the setting of such rates is consistent with the "overarching objective" of fostering "the public interest benefits of facilities competition." Motion to Hold UNE Rate Decision in Abeyance and Consider UNE Issues in the Verizon Incentive Proceeding, Case Nos. 00-C-1945 & 98-C-1357 (NY PSC filed Nov. 21, 2001).

Moreover, the long distance incumbents' argument ultimately boils down to a claim that rates should be set at the lowest level adopted (or, in this case, not adopted) in

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[10] Application of Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) ("Massachusetts Order").

[11] Unbundled Local Switching Rates Verizon — Rhode Island Section 271 Compliance Filing, Report and Order, Docket No. 3363 (RI PUC Nov. 28, 2001) ("November 28th TELRIC Order"). For the same reason, there is no merit to the long distance incumbents' claim that they supposedly demonstrated in Massachusetts that Verizon's UNE rates were too high. See AT&T at 7-8; WorldCom at 3. As these carriers admit, the Massachusetts DTE has not yet issued a ruling in that proceeding.

any state. But as both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case.[12] Consequently, the issue is not whether another state commission or this Commission might set different local switching rates than those set by the Rhode Island PUC. The only issue is whether those rates are within the range that a reasonable application of TELRIC principles would produce. And as the undisputed facts here show, the rates in Rhode Island readily meet that test. Moreover, driving rates down to the lowest possible level would undermine what Chairman Powell has described as the "ultimate objective" of the Commission's competition policy — promoting facilities-based competition.[13]

Inputs. The long distance incumbents claim that the existing rates approved by the PUC rely on inputs that differ from the inputs the PUC recently recommended for use in Verizon's future cost studies. See AT&T at iv; WorldCom at i. With a few small exceptions that have no bearing on whether the PUC-adopted rates comply with TELRIC, this claim is wrong. While the PUC did recently initiate a new cost proceeding, the inputs it recommended for use in that proceeding are, in large part, the same as those used in the cost studies supporting the existing rates adopted by the PUC. See Cupelo/Garzillo/Anglin Reply Decl. ¶¶ 5-8.

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[12] See, e.g., AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states"); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 291 (1997) ("Michigan Order") ("use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC vary from state to state").

[13] Michael K. Powell, Digital Broadband Migration – Part II at 4, at http://www.fcc.gov/speeches/powell/2001/spmkp109.pdf ("Digital Broadband Migration"); see id. (unbundling policy "should provide incentives for competitors to ultimately offer more of their own facilities").

For example, the rates that are currently in effect are based on the same assumptions regarding cost of capital, depreciation rates, and fill factors as the PUC's November 18th TELRIC Order recommends for use in Verizon's future cost studies. See id. ¶¶ 6-8; November 18th TELRIC Order at 20-21, 24-25, 51-52. Moreover, these assumptions — a 9.5 percent cost of capital, FCC-approved depreciation lives, and fill factors of 75 percent for feeder, 50 percent for distribution, and 60 percent for interoffice transport — are entirely consistent with what this Commission has found TELRIC-compliant in the past. See Cupelo/Garzillo/Anglin Reply Decl. ¶¶ 6-8.[14] Verizon proposed rates with these key inputs as part of the stipulation entered into with the Rhode Island Division of Public Utilities in July 1999, and these inputs therefore underlie the rates that the PUC ruled on in April 2000 and that it adopted as TELRIC-compliant in its November 18th TELRIC Order. See Cupelo/Garzillo/Anglin Decl. ¶ 24, 29-30.

In its November 18th TELRIC Order, the PUC did, with respect to a few inputs, establish a rebuttable presumption that Verizon should apply different assumptions in its future cost studies than the assumptions used in the existing rates. See Cupelo/Garzillo/Anglin Reply Decl. ¶ 9.[15] This does not, however, change the fact that the existing inputs yield TELRIC-compliant rates. As the PUC expressly found, the fact that it "ordered VZ-Rhode Island to include certain specific assumptions in future cost studies it files . . . *in no way affect[s] our conclusion that VZ-RI's currently effective UNE rates are TELRIC compliant.*" PUC Report at 43 n.138 (emphasis added). And, as

[14] See also Massachusetts Order ¶ 38 n.95 (Commission has approved 11.25 percent cost of capital); Pennsylvania Order ¶ 57 (9.83 percent cost of capital was "consistent with . . . TELRIC"); Kansas/Oklahoma Order ¶¶ 79-80 (approving comparable fill factors).

[15] To the extent that AT&T and WorldCom make claims about the specific inputs used in Verizon's switching and loop rates, we address those claims below.

described below, the switching and loop rates adopted by the PUC — the only two rates the long distance incumbents specifically challenge here — meet the Commission's well-established standard for demonstrating TELRIC compliance.

Switching. The PUC has approved Verizon's unbundled switching rates as "TELRIC-compliant," and these rates are "lower than Massachusetts' comparable UNE rates in April 2001 when the FCC approved Massachusetts's Section 271 application."[16] Indeed, as Verizon demonstrated in its Application, the switching usage rates approved by the Rhode Island PUC are lower (relative to cost levels) than the switching usage rates that this Commission approved in both Massachusetts and New York. See Application at 88-89; Cupelo/Garzillo/Anglin Decl. ¶ 54. In addition, the rates for all switching-related elements together — switching usage, switching port, transport, and signaling — are likewise comparable to the rates in Massachusetts and New York. See Cupelo/Garzillo/Anglin Reply Decl. ¶ 20. Thus, under the Commission's well-settled standard — as upheld by the D.C. Circuit — Verizon "has met its burden to show that its rates are TELRIC compliant." Pennsylvania Order ¶ 65.[17]

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[16] November 28th TELRIC Order at 4-5 (approving switching usage rates as TELRIC-compliant); see November 15th Open Meeting at 38-43 (approving other components of switching rates as TELRIC-compliant); Review of Bell Atlantic — Rhode Island TELRIC Study, Docket No. 2681, at 73 (RI PUC Nov. 18, 2001) ("November 18th TELRIC Order") (memorializing November 15th decision); see also November 28th TELRIC Order at 5 ("The Commission notes that approximately 90 percent of Rhode Island's UNE rates are lower than Massachusetts UNE rates.").

[17] While AT&T claims (at 4) that the PUC's November 28th TELRIC Order "offered (and conducted) absolutely no analysis" as to whether Verizon's proposed new switching rates were TELRIC-compliant, the reality is that the PUC conducted extensive analysis in finding that Verizon's original switching rates were TELRIC-compliant, and the new rates are lower than those that the PUC found consistent with TELRIC. See generally November 18th TELRIC Order. And as the PUC stated, the new rates also are lower than this Commission found acceptable in Massachusetts, which led the PUC to

Although WorldCom disagrees (at 9) with the Commission's standard, the D.C. Circuit already has upheld the Commission's approach. See Sprint, 2001 WL 1657297, at *6-*10. And neither WorldCom nor any other commenter disputes that Verizon meets that standard here. The long distance incumbents argue instead that the switching rates in Rhode Island cannot be TELRIC-based because the inputs used to calculate the rate adopted by the PUC suffer from various flaws. See AT&T at iv, 3-4; WorldCom at 3.[18] As explained above, however, under the Commission's well-settled precedent there is no need to examine the inputs underlying the rates adopted by the PUC, because the final rates are lower (relative to cost levels) than the rates the Commission approved in Massachusetts and New York.[19] Moreover, there is no basis to AT&T's claim (at 16) that applying a benchmark comparison is inappropriate here because, since those

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explain that "[a]ny criticism by AT&T and WorldCom of the UNE rates hereby approved by the Commission is unfounded." November 28th TELRIC Order at 5.

[18] While claiming on the one hand that the PUC's actions in establishing a new pricing proceeding demonstrate that Verizon's existing rates fail to comply with TELRIC, WorldCom also argues (at 3) that the Commission should not rely on this new proceeding because such proceedings "are a long way" from completion. But the fact that pricing proceedings take a long time is no reason for the Commission to abandon its long-standing policy of taking notice of such proceedings. As the Commission has held, "[r]ate-making is a complex endeavor, and it is common for state rate cases to last many months." Arkansas/Missouri Order ¶ 62.

[19] Although AT&T complains (at 15) that the switching rate in Rhode Island is higher than the rate in Pennsylvania, this is irrelevant given that the cost-to-rate ratio in Rhode Island is comparable to the cost-to-rate ratios in New York and Massachusetts. As the Commission has held, there is no requirement than an applicant state "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce." Arkansas/Missouri Order ¶ 56; see also id. ("We disagree with AT&T's assertion that Kansas should be used for a rate comparison with Missouri's recurring charges rather than Texas."); id. ¶ 67 (relying on comparison between Arkansas and Kansas, but not Arkansas and Texas); Massachusetts Order ¶ 28 (rejecting AT&T's request that the Commission compare Verizon's rates to those "found to be TELRIC-based in the SWBT states of Texas, Kansas, or Oklahoma.").

benchmark rates were set, the cost of switching equipment has declined. As the Commission has held, even where "rates . . . were set several years ago" and there has been a "decline in costs over the years," this does not cause "existing rates to be out-of-date and not TELRIC-compliant." Arkansas/Missouri Order ¶ 62. This is particularly true where, as here, the Rhode Island PUC "has demonstrated its commitment to TELRIC, and is in the process of reexamining a number of rates in ongoing rate cases." Id.; see also Massachusetts Order ¶ 33; Pennsylvania Order ¶ 64.

The long distance incumbents next complain that the switching rates in Rhode Island are not yet in effect. See AT&T at iv; WorldCom at i.[20] This is of no legal or practical consequence, however. As an initial matter, the rates for the majority of unbundled network elements that Verizon is required to provide (those specified in this Commission's Local Competition Order) already are in effect.[21] The rates for a small number of additional elements (those added by this Commission's UNE Remand Order and the switching usage rates) were adopted by the Rhode Island PUC *before* Verizon

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[20] WorldCom also complains that Verizon has not provided electronic versions of its cost models, or of the inputs used in those models. See WorldCom at 7; Frentup Decl. ¶ 11. This is untrue. Verizon provided electronic versions of its cost studies during the course of the Massachusetts state proceeding. See Cupelo/Garzillo/Anglin Reply Decl. ¶ 11. Indeed, while WorldCom complains (at 7) that without these costs studies it was unable to quantify the effect of correcting the alleged input errors used in Verizon's rates, AT&T manages to perform these very calculations. See AT&T at 8-14. In any event, the Commission has held that, even where a BOC refuses to provide access to its cost studies, this is not "fatal to this checklist item" where, as here, the Commission may approve rates "on the basis of our benchmark test." Arkansas/Missouri Order ¶ 63.

[21] See Total Element Long Run Incremental Cost — Final Rates for Verizon-Rhode Island, Order, Docket No. 2681 (RI PUC May 18, 2001) (memorializing the PUC's April 11 decision ordering the rates for UNEs established in the FCC's Local Competition Order effective as of that date); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶ 12 (1996) ("Local Competition Order"); see also Ex Parte Letter from Clint E. Odom, Verizon, to Magalie R. Salas, FCC, CC Docket No. 01-324 (Dec.19, 2001).

filed its Application, and will take effect on February 1, 2002, while this Application is still pending.[22] As the Commission has previously held, TELRIC-compliant rates adopted in a legally binding state commission order are adequate for section 271 purposes even if those rates take effect while a section 271 application is pending before this Commission. This is because, once legally binding UNE rates have been adopted by the state commission, there is a "concrete and specific legal obligation" to provide unbundled network elements at those rates, New York Order ¶ 136, and "there is no uncertainty concerning the availability of these rates to competing LECs," Kansas/Oklahoma Order ¶ 23 n.63.[23] Moreover, because Verizon's rates were adopted before Verizon filed its Application, they raise no issue regarding late-filed information under the Commission's procedural rules.[24] To the contrary, as the comments here

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[22] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

[23] Of course, as the Commission also has made clear, even if permanent rates have not yet been adopted at the time a BOC files a section 271 application, the fact that interim rates continue to apply to some elements (such as the newer elements adopted for the first time in the Commission's UNE Remand Order) until the state commission adopts permanent rates does not render the application non-compliant. See, e.g., New York Order ¶ 258 ("We conclude that a BOC's application for in-region interLATA authority should not be rejected solely because permanent rates may not yet have been established for each and every element or non-recurring cost of provisioning an element."); id. ¶ 259 ("The conditioning of xDSL loops is a relatively new issue, and because new issues are constantly arising, we believe it is reasonable to allow a limited use of interim rates when reviewing a section 271 application").

[24] As the Commission previously has explained, its procedural rules "are designed to prevent applicants from presenting part of their initial *prima facie* showing for the first time in reply comments," and by doing so to "provide an opportunity for parties . . . to comment on section 271 applications." Kansas/Oklahoma Order ¶¶ 20-21. "Thus, the rules provide that *when an applicant files new information after the comment date*, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance." Id. (emphasis added). As the Commission's own description of its rules make clear, those rules simply do not come into play here.

demonstrate, all interested parties have had a full and fair opportunity to comment on Verizon's rates. Moreover, because all of the rates approved by the PUC will go into effect prior to the time this Commission grants Verizon's section 271 Application, there is no issue here that Verizon might be permitted to provide long distance service before the time that these new rates take effect.

Finally, the long distance incumbents argue that the Commission should ignore whether the switching rates as a whole are consistent with TELRIC, and instead examine in isolation the rates for switching ports in Rhode Island. In particular, the long distance incumbents complain that Verizon charges more for a local analog switching port in Rhode Island than it charges in other states. See AT&T at 5; WorldCom at 8-9. As the Commission has found, however, there is no basis to examine the rates for a switching port standing by itself. For example, in the Massachusetts Order, the Commission relied on a comparison of the "weighted average" of the rates for "switching [usage], transport, and switch ports." Massachusetts Order ¶ 25; see also id. (noting that an "aggregate comparison is most appropriate" because rate structures differ across various states, with some states assigning more costs to flat-rate port charges, and others assigning more costs to variable switching usage charges); Arkansas/Missouri Order ¶ 60 (relying on aggregate comparison of "non-loop rates").[25]

As noted above, applying a similar comparison here demonstrates that Verizon's rates fall within the range that TELRIC would permit. In Rhode Island, the aggregate rate for switching usage, a switching port, transport, and signaling — based on monthly

[25] Just as there is no need to examine the rates for switching ports in isolation, there is no need to entertain WorldCom's claim (at 9) that the port-plus-usage rates in Rhode Island are higher than the corresponding rates in Massachusetts and New York. This comparison is narrower than those on which the Commission has relied in the past.

usage assumptions derived from Verizon's ARMIS system, cf. Arkansas/Missouri Order ¶ 60 n.161 — are lower than in Massachusetts and New York. See Cupelo/Garzillo/Anglin Reply Decl. ¶ 20.

The rates for a full platform of unbundled network elements in Rhode Island also compare favorably with the rates in Massachusetts and New York. For example, the rates for a platform in Rhode Island (again, based on monthly usage assumptions from ARMIS) are virtually the same as the rates in New York and within one dollar of the Massachusetts rates. See id. ¶ 22. While the Commission has typically examined the rates for loops and non-loop (*i.e.*, switching-related) elements separately, the reality is that requesting carriers do not purchase switching elements separately from loops but typically only purchase unbundled switching as part of a platform arrangement. See id. ¶ 20.

Loops. The PUC has likewise concluded that the loop rates it adopted in Rhode Island comply with TELRIC. As Verizon has previously explained, the loop rates in Rhode Island are, on average, lower than the loop rates approved by the Commission in Massachusetts and New York, even though the costs in Rhode Island are higher than costs in those states. See Application at 91; Cupelo/Garzillo/Anglin Decl. ¶¶ 52-53. As a result, there is no legitimate argument that these rates are outside of the range that a reasonable application of TELRIC principles would produce. See, e.g., Pennsylvania Order ¶¶ 63-65; Kansas/Oklahoma Order ¶ 82; Arkansas/Missouri Order ¶ 56.

Despite this, WorldCom (though not AT&T) argues that several of the inputs that the Rhode Island PUC used in calculating Verizon's loop rates are improper. See WorldCom at 10-12. Even assuming, *arguendo*, that WorldCom was correct, however, it is irrelevant here. As described above, the Commission has held that even where a state

Commission applies TELRIC "improperly" the Commission will still "look to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce." Arkansas/Missouri Order ¶ 56; see also Pennsylvania Order ¶ 61.[26]

III. THERE IS NO LEGITIMATE PUBLIC INTEREST ISSUE REGARDING THE RATES ADOPTED BY THE PUC.

The long distance incumbents attempt to repackage their substantive challenges to Verizon's rates as a price-squeeze claim. They argue that the difference between Verizon's existing UNE rates and the retail rates in Rhode Island is too small for competing carriers to earn a gross profit that is large enough for these carriers to compete for residential customers. See AT&T at 17 & nn. 40, 41; WorldCom at 3 n.2. Accordingly, they claim that Verizon's long distance entry would not be in the public interest. These arguments are misguided as both a legal and factual matter.

As an initial matter, the long distance incumbents fail to satisfy the basic legal prerequisites for a price-squeeze claim. A price squeeze can exist only where a firm has

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[26] Although the Commission should not consider WorldCom's claims about the specific inputs used in Verizon's loop rates, the Cupelo/Garzillo/Anglin Reply Declaration demonstrates that these claims – all of which were considered and rejected by the PUC – are unfounded. For example, with respect to two of the input assumptions that WorldCom contests (regarding the use of universal digital loop carrier in the feeder and the level of structure sharing) the PUC did not, as WorldCom claims (at 10-11), adopt inputs that differ from those used in Verizon's existing rates. Rather, the PUC merely adopted a presumption to use different assumptions in Verizon's *future* cost filings, but found that this "in no way affects the conclusion that VZ Rhode Island's currently effective UNE rates are TELRIC compliant." PUC Report at 43 n.138; Cupelo/Garzillo/Anglin Reply Decl. ¶¶ 25-26. Moreover, with respect to the other two challenged input assumptions (regarding the use of all-fiber feeder and fill factors) the PUC found that the assumptions Verizon used were TELRIC-compliant. See Cupelo/Garzilo/Anglin Reply Decl. ¶¶ 24, 27 (citing relevant PUC orders). Moreover, these assumptions are entirely consistent with what this Commission has found TELRIC-compliant in the past. See id. (citing relevant FCC orders).

monopoly control over an essential input, and its price for that input is "higher than a 'fair price.'" United States v. Aluminum Co. of Am., 148 F.2d 416, 437-38 (2d Cir. 1945); see also Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990). None of these conditions is remotely met here.

First, the price-squeeze claim here relates exclusively to the price of the UNE platform, but the platform is in no way an essential input given that the Act makes available a variety of other means in which to gain access to Verizon's network. For example, competitors also may serve customers through resale of Verizon's services, by obtaining stand-alone UNEs from Verizon, by interconnecting their own facilities with those of Verizon, or by some combination thereof. Indeed, the Act guarantees that competing carriers can *always* avoid a price squeeze by reselling Verizon's services, the rates for which must be set at a discount from Verizon's retail rates. See 47 U.S.C. § 251(c)(4); id. § 252(d)(3) ("[A] State commission shall determine wholesale rates [for resold services] on the basis of retail rates."); *id.* § 251(c)(4).[27]

Second, there is no question that Verizon is offering the UNE platform at a "fair price." As demonstrated above, competitors may obtain the platform at rates the PUC adopted and found TELRIC-compliant. And the courts have held that where, as here, both wholesale and retail rates are fully regulated, a price squeeze normally will not occur. In Town of Concord, for example, then-Judge Breyer stated that "'normally' a

[27] The Commission's own lawyer made just this argument before the D.C. Circuit in the appeal of the Kansas/Oklahoma Order. See Transcript of Oral Argument at 28, Sprint Communications Co. v. FCC, No. 01-1076 (D.C. Cir. Sept. 17, 2001) (noting that the "pricing provision for resale" under sections 251(c)(4) and 251(d)(3) "directly addresses the price squeeze."); id. at 29 ("competitors can compete with resale even assuming that there is a price squeeze problem on the network element side").